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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,071	04/15/2004	Alfred Stett	WWELL73.009C1	7156

20995 7590 03/08/2006

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EXAMINER

JOHNSON, SHEVON ELIZABETH

ART UNIT PAPER NUMBER

3766

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/825,071	Applicant(s) STETT ET AL.	
	Examiner Shevon E. Johnson	Art Unit 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1-24.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-24 is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 10, 11 and 20 is/are rejected.
- 7) ☒ Claim(s) 7, 9, 12-19, 21 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/15/04 & 8/23/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Lindemans (U.S. Patent No. 4,310,000), cited by applicant.**

In regards to claim 1, Lindemans discloses an electrode arrangement for electrical stimulation of biological material (fig. 7), having at least one stimulation electrode via which the biological material can be fed a stimulus signal, and having at least one counter electrode (passive sensing reference electrode) which forms a counter pole to the stimulation electrode, wherein determining the polarization voltage across the stimulation electrode is accomplished with the aid of at least one sensor (amplifier) electrode (col. 3, line 47 - col. 4, line 17).

4. **Claims 1 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Michelson (U.S. Patent No. 4,628,933), cited by applicant.**

Michelson discloses an electrode arrangement for electrical stimulation of biological material, having at least one stimulation electrode 28 or 29 via which the biological material can be fed a stimulus signal, and having at least one counter electrode 24 or 27 which forms a counter pole to the stimulation electrode (col. 3, line 65 – col. 4, lines 17 and col. 4 lines 34-38), wherein determining the polarization voltage across the stimulation electrode is accomplished with the aid of at least one sensor electrode 36 (col. 4, lines 56-65).

5. Claims 1-6, 8, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Carter et al. herein noted as Carter (U.S. Patent No. 5,674,264), cited by applicant.

In regards to claim 1, Carter discloses an electrode arrangement for electrical stimulation of biological material (Figs. 1, 2 and 4), having at least one stimulation electrode 16 via which the biological material can be fed a stimulus signal, and having at least one counter electrode 19 which forms a counter pole to the stimulation electrode, wherein at least one sensor electrode 16 and/or 30 is provided with the aid of which it is possible to determine a polarization voltage across the stimulation electrode (col. 2, lines 43-57 and col. 5, lines 61-67).

In regards to claim 2, Carter discloses a system that includes a difference element 32 with at least two inputs, a first input being connected to the stimulation electrode, and a second input being connected to the sensor electrode (col. 3, lines 1-12).

In regards to claims 3 and 5, Carter discloses a system that includes an interrupter or changeover switch 22, which interrupts the stimulus signal as a function of the determined polarization voltage and short-circuits the stimulation electrode and the counter electrode (col. 2, lines 58-67).

In regards to claims 4 and 6, Carter discloses a system that includes an interrupter changeover switch 22, which interrupts the stimulus signal as a function of the determined polarization voltage and short-circuits the stimulation electrode and the counter electrode (col. 2, lines 58-67).

In regards to claim 8, Carter discloses a system that includes a memory 30 in which a maximum value of the polarization voltage can be stored (col. 3, lines 34-37).

In regards to claims 10 and 11, Carter discloses a system wherein the sensor electrode is arranged in the immediate vicinity of and/or next to the stimulation electrode (col. 2, lines 58-67, fig. 2).

6. Claims 1, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Heinze et al. herein noted as Heinze (U.S. Patent No. 5,247,945), cited by examiner.

In regards to claim 1, Heinze discloses an electrode arrangement for electrical stimulation of biological material (Figs. 2, 4, 6 and 8), having at least one stimulation electrode 2 via which the biological

material can be fed a stimulus signal, and having at least one counter electrode 21 which forms a counter pole to the stimulation electrode, wherein at least one sensor electrode 8 is provided with the aid of which it is possible to determine a polarization voltage across the stimulation electrode (col. 5, lines 5-12).

In regards to claims 10 and 11, Heinze discloses a system wherein the sensor electrode is arranged in the immediate vicinity of and/or next to the stimulation electrode (col. 5, lines 5-7).

Allowable Subject Matter

Claims 7, 9, 12-19, 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 23 and 24 allowed, these claims recite combinations not disclosed in the art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shevon Johnson whose telephone number is (571) 272-2010. The examiner can normally be reached on M-F (8 a.m. - 4:30 p.m.). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shevon Johnson
Art Unit 3766


Robert Pezzuto
Supervisory Patent Examiner
Art Unit 3766